UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

'08 MJ 1463

UNITED STATES OF AMERICA, Plaintiff, v. **Javier MARTINEZ,** Defendant	Magistrate Docket No. COMPLAINT FOR VIOLATION OF: Title 8, U.S.C., Section 1326 Deported Alien Found in the United States

The undersigned complainant, being duly sworn, states:

On or about **May 8, 2008** within the Southern District of California, defendant, **Javier MARTINEZ,** an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

SIGNATURE OF COMPLAINANT
James E. Bailey
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 9th DAY OF MAY 2008

Louisa S. Porter
UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:
Javier MARTINEZ

PROBABLE CAUSE STATEMENT

On May 7, 2008, Border Patrol Agent B. Beaton was performing Border Patrol duties near Jacumba, California.

At approximately 11:30 p.m., Agent Beaton was sign cutting a dirt road known as "Close Cut" when he observed foot prints for approximately 12 people crossing the road. Close Cut is approximately 22 miles east of the Tecate, California Port of Entry and about one mile north of the United States/Mexico International Border. Further, this area is heavily traveled by illegal aliens attempting to further their entry into the United States. Agent Beaton began to follow the footprints in a northeastern direction. The group of suspected illegal aliens continued in this direction on a path well used by illegal aliens.

On May 8, 2008 at approximately 12:15 a.m., Border Patrol Agent J. Alvarado observed the group of suspected illegal aliens on a ridgeline just to the east of the Jacumba Tow yard. Agent Alvarado was positioned on the Solar Panel Highpoint utilizing an infrared night scope. Agent Beaton continued to follow the footprints and with the guidance of Agent Alvarado, Agent Beaton located six of the 12 illegal aliens. Agent Beaton identified himself as a United States Border Patrol Agent and questioned each subject as to his or her citizenship. All subjects, including one later identified as the defendant **Javier MARTINEZ**, admitted to being citizens and nationals of Mexico illegally in the United States. They also admitted that they did not possess any immigration documents that would allow them to be or remain in the United States legally. At approximately 12:30 a.m., Agent Beaton placed the six subjects, including the defendant, under arrest and transported them to the Boulevard Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on **December 17, 2007** through **San Ysidro, California.** These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.